IN THE MISSOURI COURT OF APPEALS
STATE OF MISSOURI

JUDITH BECHTOLD, et al.,	)	
	)	
Appellants,	)	
	)	
v.	)	
	)	Appeal No. 67517
MONSANTO COMPANY,	)	
	)	
Respondent.	)	

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, MISSOURI
22ND JUDICIAL CIRCUIT
Honorable Jimmie M. Edwards, Judge

JUDITH BECHTOLD, et al.,	)	
	)	
Plaintiffs.	)	
	)	
v.	)	
	)	Cause No. 922-0911
MONSANTO COMPANY,	)	
	)	
Defendant.	)	

VOLUME SIX

TRANSCRIPT OF RECORD ON APPEAL

Appearances:

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them because we don't have that letter.

MR. CARNEY: Unfortunately, we don't have the --

THE COURT: Counsel, paragraph one is out. Paragraph three is out. Paragraph two is fair game. The jury will just have to weigh the credibility of the documents.

We're going to finish Mr. Papageorge tomorrow morning, I hope, relatively quickly.

[Court adjourned on this cause for this day at 6:04 p.m., to resume the following morning.]

oOo

[The following morning, Friday, the 19th day of August 1994, beginning at 9:00 a.m., proceedings were conducted in the courtroom within the presence of the jury:]

THE COURT: Good morning, ladies and gentlemen.

Mr. Papageorge, would you be kind enough to return to the witness chair?

[The witness resumed the stand.]

THE COURT: Mr. Papageorge, I remind you, sir, that you are still under oath to tell the truth.

Pull that microphone up so that you may be heard.

Mr. Murray, you may proceed.

MR. MURRAY: Thank you, Your Honor.

REDIRECT EXAMINATION (Continued)

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BY MR. MURRAY:

Q Good morning, Mr. Papageorge.

A Good morning, Mr. Murray.

Q You recall prior to -- the last thing we did yesterday afternoon was I showed you a memo or a letter that you had written where you had indicated that, after an exhaustive search, you were unable to find any articles on poisoning by Aroclors; is that correct?

A That is correct, yes.

Q And I believe we had gotten to the point where I had showed you this exhibit, Plaintiffs' Number 44?

A I remember it, yes, sir.

Q And I was in the process of asking you who Mr. Mather was, and I believe you indicated that he was a Monsanto employee in what department, sir?

A Research department.

Q And this memo is dated December 17, 1951; correct?

A It is.

Q I'm going to read you the second paragraph of that memo that says, "A little browsing into the literature reveals quite a history of skin troubles and liver troubles (including some fatal cases) attributed to heavy exposure to chlorinated diphenyls." Is that what Mr. Mather said in 1951, sir?

A He said that, yes, sir.

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Q The next thing I want to go to is the Drinker study, which there has been a lot of testimony about so far. I'm going to show you what's been marked as Monsanto's Exhibit Number 231. Is that the Drinker wherein he admits making a mistake about the previous diphenyl paper he had written?

A May I peruse it a while?

A Yes, you may, sir.

MR. MURRAY: Your Honor, our copy is missing from our exhibits on that one.

THE COURT: Mr. Murray, why don't you grab the document and let Mr. Carney take a look at it.

MR. MURRAY: Thank you.

[Item shown to defense counsel and returned to the witness.]

THE WITNESS: Thank you. I have looked over the document and it is the document in which Dr. Drinker states that the health effects of the chlorinated diphenyls were a surprise to him as non-toxic.

Q (By Mr. Murray) He was specifically talking in that paragraph, Mr. Papageorge, regarding Aroclor 1268; was he not?

A He was.

Q Just so we can review, what happened was that Monsanto provided him a product which was mistakenly

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identified as a chlorinated diphenyl which, in fact, was a combination of chlorinated diphenyl and chlorinated diphenyl benzene?

MR. CARNEY: Objection, Your Honor.

THE COURT: Counsel, approach the bench. I'm not sure I understand.

[The following proceedings took place at the bench outside the hearing of the jury:]

THE COURT: Is this the issue dealing with the naphthalene?

MS. RUTTER: Yes, and the problem with the question, Dr. Kelly's testimony is that Monsanto didn't provide the product. Drinker got the wrong stuff from Halowax, who called it chlorinated diphenyl.

MR. CARNEY: It is a mischaracterization of the evidence.

THE COURT: Counsel, did you understand what the objection is?

MR. MURRAY: I'm not sure I understand what the -- it doesn't matter. I'll rephrase it.

THE COURT: All right, thank you.

[Proceedings were then resumed within the hearing of the jury as follows:]

Q (By Mr. Murray) Mr. Papageorge, whoever provided the sample that Dr. Drinker tested originally, rather than

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being pure chlorinated diphenyl, it was a combination of chlorinated diphenyl and chlorinated diphenyl benzene; correct?

A I don't see that in this document, sir. I see a reference to Compound 13 and, on page 157 of the article, Compound 13 is described as chlorinated diphenyl.

Q But isn't that the one that he comes back here in this other part of the article and says, "Later experiments with Compound 13, which contains sixty-eight percent of chlorine, was also labeled chlorinated diphenyl. It was a surprise to us because the second compound was almost non-toxic." That's the 1268 that I'm talking about; right?

A Well, that's sixty-five percent.

Q Sixty-eight percent.

A I'm sorry. Yes, that is sixty-eight.

Q Okay. And he indicates that was the reason that was a surprise because the last chlorinated diphenyl he had tested, which was, he believed 1265, wasn't really 1265, it was a combination of 1265 and some other, I think he indicates it's chlorinated -- a mixture of chlorinated diphenyl and chlorinated diphenyl benzene?

A Yeah, that's what the article says, yes, sir.

Q So he had made a mistake on that one particular compound; correct?

A The mistake, as I understood it, was associating

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the effects with diphenyl only, and this is what he attempts to correct with this document.

Q Exactly. That's the point I'm making. He had, in the previous article, attributed some severe liver effects to a substance which he had identified as chlorinated diphenyl but, in reality, it was a mixture of chlorinated diphenyl and chlorinated diphenyl benzene; correct?

A I believe so, yes.

Q And he corrected that mistake in his paper?

A That was one of the purposes of the paper, yes, sir.

Q He came back and he tested a product that was provided to him by Monsanto which was the 1268; correct?

A I don't know who provided that sample.

Q I'm sorry, that doesn't matter.

MR. CARNEY: I will stipulate Dr. Kelly said in his testimony that he supplied the second sample; the first one was from Halowax.

Q (By Mr. Murray) The 1268 he tested and he found out it wasn't very toxic; right?

A That's what the article says.

Q But that doesn't tell us the whole story about this article; does it? Because, in fact, there is another chlorinated diphenyl which he tested, and I'm going to refer you to number nine on his tables.

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A I see it.

Q That's a -- he indicates is a fifty to fifty-five percent chlorination?

A He does.

Q Which would correspond with what? Twelve fifty-four?

A Yes.

Q And he found that the proper permissible limit for that compound was .5 milligrams per cubic meter; didn't he?

A Yes, for the workplace, uh-huh.

Q So, when he came back and changed the permissible limit on 1268, that didn't effect what he found on this other one; did it?

A No, it doesn't.

Q And, in fact, he indicated that with all fourteen compounds, there was liver damage to the animals?

A At the high exposure levels, yes, sir.

Q I want to talk to you about Monsanto 219, which has been identified as the particular brochure regarding the Proper Handling of Aroclors in the Electrical Industry; right?

A This is one version of many, many versions published through the years.

Q This is the version we have here in the courtroom; right?

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A I don't know what you have.

Q Monsanto Exhibit Number 219?

A It is.

Q I want to direct your attention to Chapter Twelve, page 98, 99 and 100. That is the section of that book that talks about dermatology and toxicology of the product; correct?

A That is correct.

Q That's the only section in that book that talks about that; is that correct?

A I believe so, yes, sir.

Q Let's look at it, Mr. Papageorge. The first paragraph regards skin exposure; correct?

A It does.

Q And it reads, "Aroclors or Askarels accidentally spilled on the skin do not cause an acute toxicity hazard, nor will they cause serious irritation. The materials should be washed from the skin with soap and water. Prolonged contact with the skin should be avoided. If work clothes become impregnated with these fluids, they should be removed and washed."

Did I read that correctly?

A You did.

Q Is that a typical way of phrasing the warnings and the precautions which Monsanto used in all of its

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literature?

MR. CARNEY: Objection to the form.

THE COURT: It will be overruled.

THE WITNESS: It's fairly typical, yes, sir.

Q (By Mr. Murray) What does "prolonged" mean to you, Mr. Papageorge?

A Well, it has different meanings with different materials. I have in mind, for example, battery acid. Prolonged is in seconds. With other materials, there are different periods of time involved with them.

Q And determining what is prolonged for any particular chemical, it would be important, would it not, to know what will happen to you if you do leave it on for too long?

A Certainly.

Q If I were handling an Aroclor as an example, and I got some on my hand, if I knew if I left it on there too long and it might cause pimples, that would be one thing; but, if I left it on there knowing that it might cause liver damage, that's a completely other thing; isn't it?

A Yes, but you're not working with all the facts. You should be told that the minute you get red hands, that's too much. That's long before the chloracne and the liver damage occurs. So, there is an early warning symptom that should be acknowledged and something done.

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Q I agree with that, Mr. Papageorge. Where is it in here that tells you about that early warning?

A Industrial hygienists know that, sir. They don't need Monsanto's word for word to guide them.

Q It's not in here; is it?

A That's true.

Q Let's turn to the section on exposure to vapors, which is on page 99. I just ask you to review that section for a minute and I'll ask you some questions about it.

A I have scanned it.

Q Okay. Again, it talks about vapors from hot Aroclor or Askarel have a degree of toxicity and should not be inhaled over a prolonged period of time; correct?

A Correct.

Q Again, we have that word "prolonged"; correct?

A Also, if you'll read on, sir, you'll see --

Q I'm going to get to that, don't worry.

A -- an amount and time, so you get your prolonged defined for you.

Q Okay. It says, "Experimental work on animals indicates that the maximum safe concentrations of vapors in workrooms is in the range of .5 to 1 milligram per cubic meter of air"; correct?

A That is correct.

Q "Harmful amounts of materials are readily

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detectable by odor and irritation to the eyes."

A When the level reaches those -- that -- when the level is reached that you note those conditions, yes, that's harmful.

Q "Usually, people can detect concentrations of Askarels in the amount of 1 milligram per cubic meter of air, which is the level regarded as a safe workroom limit for eight-hour-a-day exposure." Right?

A That's what it says, yes, sir.

Q So this tells me, even though I'm smelling this in the atmosphere, as long as I'm not having irritation of the eyes, it's safe?

A Yes.

Q By the way, did Monsanto ever run any tests to determine what level of the atmosphere you can get irritation of the eyes?

A Not that I'm aware of.

Q It goes on, "Capacitor impregnations may be done at temperatures as high as 266 degrees Fahrenheit. Following impregnation and draining the chamber" --

MR. CARNEY: Please put in the parens, the Centigrade.

Q (By Mr. Murray) -- "266 degrees Fahrenheit (130 degrees Centigrade). Following impregnation and draining the chamber, exhaust ventilation should be applied to the

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chamber to prevent Askarel vapors from entering the workroom. Also, when opening a heated capacitor impregnating chamber, the workman should wear a respirator during this short interval of exposure."

Is that what your materials tell the workmen to do?

A That's what we were advising the customer to tell his employees.

Q All right. So I, as a customer, if I cool down my ovens before opening them, then that's safe?

A It depends on how long you keep them closed down and how cool they were when you did open them.

Q Can you show me in here where it tells me how long I have to cool it and what temperature I have to cool it to?

A Well, there are two points raised here relating to the opening of those chambers. One is to provide exhaust ventilation in the workroom; and the other is that, when the worker opens the chamber, he should wear a respirator.

Q Mr. Papageorge, we just read that; didn't we?

A Yes, sir.

Q And it didn't say when he opened the chamber. Is says, "If you open up a heated chamber, to wear a respirator." The question I asked you is: What temperature does it have to cool down to before you can open it safely?

A You can open it safely if you wear a respirator, sir, at any temperature. You can open it safely if there's

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no one in the room, do it remotely. I don't understand your question. There's many ways to open the chambers.

Q My question is to you, Mr. Papageorge, if I don't want to wear a respirator, how cool do I have to let those ovens get to before I can open it?

A I'd suggest room temperature.

Q I know what you would suggest, but is it in there?

A I don't think I have to tell that to the people who operate these chambers and work with the PCBs. They know that, sir.

Q My question was: Is it in there?

A No, it's not necessary.

Q Okay. So if I let the ovens cool down to room temperature, then I'm safe?

A You're as safe as you were when you introduced the cooled PCBs into the chamber.

Q Okay. Just so I can make sure I've covered all my bases, there is nothing in this entire book, nothing in this section regarding toxicology and dermatology that tells the workman what might happen to him if he doesn't follow those rules; is there?

A Sir, this is not for the workman. It was never intended for the workman to read. That's for his bosses to read and use in arriving at their safe practices.

Q What did you provide for the workmen to read?

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A Nothing. It's not our -- we can't do that.

Q You indicated yesterday, Mr. Papageorge, that there was a memo written by Mr. -- Dr. Calandra that you would circulate at these meetings where you talked about the IBT studies and the Kimbrough studies?

A Yes, sir. It was a summary report. I don't know if the term "memo" applies, but --

Q I'm not sure of what it is either, and that's why I want to show you this. I show you Plaintiffs' Exhibit Number 114 and ask you if you've seen that and if that's the memo that you would circulate?

MR. CARNEY: Give us a chance to get the exhibit.

MR. MURRAY: He's looking at it.

MR. CARNEY: Your Honor, I don't think this was covered.

MR. MURRAY: I don't know if it was and that's why I'm asking him.

MR. CARNEY: What I'm saying is, I think this goes beyond the scope of the cross-exam.

Q (By Mr. Murray) Is that the one --

THE COURT: Just wait a minute. Let me just take a look at my notes. We've got 214. We never made it to 114. Objection will be sustained.

MR. MURRAY: Your Honor, may we approach the bench?

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THE COURT: Yes, you may.

[The following proceedings took place at the bench outside the hearing of the jury:]

MR. MURRAY: Your Honor, you're correct in saying we never got to that. He never used 114 in his cross-examination. But in his cross-examination, he did ask Mr. Papageorge about the Kimbrough studies and the IBT studies and even went so far to testify that he ended up agreeing with Kimbrough. And that document is to be used to rebut that testimony about what he was saying about Kimbrough, the Kimbrough studies at all of these meetings.

MR. CARNEY: Your Honor, this is a letter from Calandra. It doesn't have anything to do with Kimbrough, what Kimbrough said. I mean, it doesn't have -- all it does is show a copy to Bill Papageorge, but this is a memo of what Calandra said about a certain meeting. I didn't cover it.

MR. MURRAY: And he testified --

MR. CARNEY: I did not cover this memo. What I did, the only thing I did cover is, did Kimbrough come to the meeting. And if you want to ask about whether Kimbrough came to the meeting, that was the limit that I got into on this area.

MR. MURRAY: Exactly. And I asked him yesterday,

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Your Honor, if you would remember, that did they tell him -- did they tell them at that meeting whether or not Drs. Gordon and Richter had reviewed the Kimbrough study and he said we didn't tell them specifically, but we circulated a memo which discussed it. That's that memo.

THE COURT: Is this the memo? One of the memos circulated?

MR. MURRAY: That's what I've asked him. I haven't got an answer yet. I think it is.

MR. CARNEY: But what I said, I did not go into this memo or this letter or what Calandra said in my cross.

THE COURT: All right. If Mr. Papageorge indicates that this is the memo that was left, or that Exhibit 114 was the memo that was left with customers and governmental agencies, then I will permit you to ask him questions concerning the memorandum. If he said he doesn't know or no, it's out.

MR. MURRAY: I understand that. Thank you, Your Honor.

[Proceedings were then resumed within the hearing of the jury as follows:]

THE COURT: All right, counsel, you may proceed.

Q (By Mr. Murray) All right, Mr. Papageorge, have

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you had a chance to review that memo?

A I have.

Q Is that the one you would leave with the people at the meetings?

A No, sir.

Q It's not? And what you're telling me is there was some memo around where Dr. Calandra summarized what Drs. Richter and Gordon had found?

A Yes, sir.

Q I would assume, Mr. Papageorge, that Monsanto would have kept a copy of that memo?

A I would assume with you, sir, yes, sir.

Q Have you seen it at all in the last ten years?

A No.

MR. CARNEY: I would object to that. I don't think there's any foundation for that.

THE COURT: Objection will be sustained.

Q (By Mr. Murray) You mentioned in response to one of Mr. Carney's question that -- I want to make sure I get the language correct, two-year chronic toxicity testing on industrial chemicals was new and foreign at the time you instituted those studies with IBT?

A I did say that.

MR. CARNEY: Your Honor, I just want to pose an objection to the question because I think he said new

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and foreign as to industrial chemicals, as I recall.

MR. MURRAY: That's exactly what I asked him.

MR. CARNEY: Oh, did you? All right.

Q (By Mr. Murray) Did you ever hear of a study by Smith, Sunderlein and Seguera called "Experimental Analysis of the Carcinogenic Activity" --

MR. CARNEY: Your Honor, I'm going to object. Can we approach on this?

THE COURT: We don't need to approach, counsel. I mean, he has not testified as an expert with regard to these toxicological studies. The objection will be sustained. You need to move forward.

Q (By Mr. Murray) So when you said, Mr. Papageorge, that it was new and foreign, it was new and foreign to you?

A Well, certainly to me, but I understood from other people associated with industry that this was new. And, I also know because I was able to speak to individuals in government that, when Monsanto approached them on suggestions and the type of testing that would be appropriate, they were at a loss to advise Monsanto.

MR. MURRAY: May I get into it now, Your Honor?

THE COURT: Counsel, it's collateral. Let's move forward.

MR. MURRAY: It has to do with -- I'm sorry. Can we approach the bench, Your Honor?

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THE COURT: Yes, you may.

[The following proceedings took place at the bench outside the hearing of the jury:]

THE COURT: Mr. Murray, this is a collateral matter with regard to whether he was aware of any studies that occurred twenty, thirty, forty years -- I mean, he indicated that -- I mean, it's basically collateral. He indicated he had heard some things.

MR. MURRAY: It goes directly to his credibility. He's telling me that the government didn't know, that he didn't know, and the people he spoke to at Monsanto didn't know. And there they are right there in the literature.

MR. CARNEY: He's not a toxicologist. We've had toxicologists testify on this issue. We've got a toxicologist that will testify. I think it's -- it goes beyond the scope of direct.

THE COURT: Mr. Murray, I am going to sustain the objection with regard to this matter.

[Proceedings were then resumed within the hearing of the jury as follows:]

Q (By Mr. Murray) You testified yesterday, Mr. Papageorge, in response to one of Mr. Carney's questions, that Monsanto had no indication that anything was wrong with the chronic toxicity testing that was taking place at IBT;

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is that correct?

A That is correct.

Q I'm going to show you a document which has been previously identified as Plaintiffs' Exhibit Number 332.

MR. CARNEY: Your Honor, could we approach on this?

THE COURT: Yes, you may.

[The following proceedings took place at the bench outside the hearing of the jury:]

MS. RUTTER: You did rule earlier through Phil Smith that he could get this document in, but this is an internal IBT document that Monsanto never saw.

MR. MURRAY: Your Honor, it's in evidence and it discusses --

THE COURT: This is a document I have already admitted into evidence; is that correct?

MS. RUTTER: Yes.

MR. MURRAY: Yes.

MR. CARNEY: But, Your Honor, the point here is, first of all, it goes beyond the scope of my cross.

MR. MURRAY: No, it does not.

MR. CARNEY: And, secondly, this is an internal IBT document. If he wants to ask him if he's ever seen that document before, you know, I guess that would be permissible. But, otherwise, for him to use this

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document that he hasn't seen --

THE COURT: This is the document dealing with the Aroclor studies; is that correct?

MR. MURRAY: Yes. It's the rat toxicity studies.

MR. CARNEY: But it's a totally internal IBT document. There's no evidence it went to anybody at Monsanto.

MR. MURRAY: It talks about the survival rate of the rats past eighteen months. It's so difficult, they can't reach any conclusions.

THE COURT: If he doesn't have any knowledge of the document or if he's not familiar with the document, I am not going to permit any follow-up questions with the document. But he can certainly use the document to examine this witness. I mean, this witness will make a -- I mean, this witness will, by his answers, will determine whether any additional questions may be asked with regard to this document.

Let's proceed.

[Proceedings were then resumed within the hearing of the jury as follows:]

Q (By Mr. Murray) Mr. Papageorge, have you ever seen that document before, sir?

A It reminds me of similar documents that were shown to me during depositions in about 1987.

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Q You never saw it while you were the environmental manager for IBT -- I mean, for Monsanto; did you?

A No, sir.

Q Let me ask you this though: Monsanto was aware, were they not, of the survival rate of the rats in their chronic toxicity studies?

A I don't know. I can't speak for the toxicologists that monitored the work.

Q Well, the survival rate was published in the studies; wasn't it?

A There's references to survival, but I don't know any of the details at the moment. I'd have to re-read the whole report.

Q Let me ask you this: Was there any discussion at Monsanto during the time that these studies were being done that the survival rate of the animals might jeopardize the conclusions about the study?

A I'm not aware of any.

Q Nobody over there ever discussed it, huh?

A Not in my presence.

Q Just one last point, Mr. Papageorge. You indicated that when you went to Sweden to discuss Dr. Widmark's findings with him --

A Yes, sir.

Q -- that he indicated that he had absolutely no

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basis on which to conclude that the amount of PCBs being found in the environment was causing any problem; is that fair?

A What kind of problems are you talking about? Health problems?

Q I think you mentioned toxicity?

A To living creatures and all that?

Q Right.

A That is true.

Q Did Monsanto ever provide him with the data that it had regarding the toxicity of the chemicals?

A At that meeting, yes, sir.

Q What did you provide him?

A The status reports from the IBT studies that were available in April of 1970.

MR. MURRAY: Thank you. That's all I have.

THE COURT: Recross, counsel?

RECROSS-EXAMINATION

BY MR. CARNEY:

Q Let me show you exhibit, Monsanto Exhibit 360. It's the process, Westinghouse process spec that's been referred to by other witnesses. And let me ask you, at page nine of that process spec of Westinghouse, if it does not read that the capacitors may be removed from the oven as soon as they are cool enough to handle without objectionable

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Inerteen fumes, and then it refers to safe practice data sheets for recommendations on safe handling of the temperature?

A It does say that.

Q Did you have any reason to believe, while you were either at the Anniston plant or thereafter, that Westinghouse needed more information on how to cool their ovens or what temperatures they needed to cool their ovens before they opened the oven doors?

A I did not.

Q And had Westinghouse indicated to you that at any of these five plants where they used PCBs, they were having health problems with their workers?

A No.

Q And the Westinghouse process spec that has been testified before that was in the files and utilized throughout the plant, it has a caution there about, "Do not breathe Inerteen vapor"; does it not?

A It does.

Q It does not say --

MR. MURRAY: What page, counsel?

MR. CARNEY: That's on page two.

Q (By Mr. Carney) It does not say, "Do not have prolonged breathing of Inerteen vapor"? It just says, "Do not breathe Inerteen vapor"; doesn't it?

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A It does.

Q And the next sentence or the last sentence of this caution on page two of the Inerteen process spec that was used at Westinghouse to make PCB capacitors says, "Contact of the Inerteen with the skin should be avoided as much as possible"?

A It does.

Q And Mr. Murray asked you where in what particular document that Monsanto sent one of the Aroclor handling memos, these thick brochures, where it said that you could get chloracne. Were there documents that Monsanto sent to Westinghouse that indicated that you could get chloracne with excessive PCB exposure?

A Yes, there were.

Q And did you understand that Westinghouse also had access to the literature about PCBs?

A Certainly.

Q And then, the safe practice data sheet -- and this is Monsanto Exhibit 335 -- that there's been testimony by Mr. McClain was in the offices of the Westinghouse Bloomington plant, and this safe practice data sheet was referred to in the process spec under "Breathing" --

MR. MURRAY: Could you wait a second? Just a second? Go ahead.

Q (By Mr. Carney) Under "Breathing" on the first

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page of this Inerteen Westinghouse safe practice data sheet it says -- it talks about what the maximum acceptable concentrations of capacitor Inerteen vapors are; is that correct?

A It does.

Q And then it says, "The concentrations of capacitor Inerteen, which exceed those maximum acceptable concentrations, may cause irritation of the eyes, nose, throat, and upper respiratory tract"; is that correct?

A That is correct.

Q And then it says, "Much higher concentrations could cause internal reactions"?

A It does say that.

Q And then it talks -- has a whole section on personal protective equipment?

A I see that.

Q Well, also, it talks about skin irritation, and this is with short duration, you can have some skin irritation?

A It does.

Q And it also says it can be absorbed through the skin?

A It does.

Q And it says that, "Repeated and prolonged contact could result in a severe skin condition which may persist

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for many months after removal from exposure"?

A It does.

Q And then it has a whole section in bold print on personal protective equipment?

A I see that.

Q And it talks about, "When necessary, under emergency conditions" -- I'll kind of read it with you -- "to enter a space containing high concentrations of the Inerteen vapor, use either" a certain type of universal gas mask or an airline respirator or another type of a mask or self-contained breathing equipment. And it described serial numbers for those types of equipment?

A It does.

Q Then it tells what kind of airline -- air supply you should use with the airline respirator?

A Yes.

Q Then it says, "If the odor of Inerteen is noticed while wearing respirator protection, the wearer should immediately go into fresh air"?

A It does.

Q And this is the Inerteen Westinghouse safe practice data sheet?

A It is.

Q And it's dated, revised date, December 1, 1962?

A It is.

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Q And then it talks about precautions for, "breathing of air, of vapors or fumes from heated Inerteen should be avoided"?

A It does say that.

Q And that's in bold print, and it has other precautions about, "care should be taken to avoid appreciable contact of this material with the skin"?

A It does.

Q And then it also talks about ventilation and that's in bold print?

A It does do that.

Q And then it talks about first aid?

A Yes.

Q Now, Mr. Murray talked about Exhibit 217, which is the 1956 Aroclors proper handling brochure, and he read that first paragraph about the skin patch test; do you recall that?

A I recall that.

Q And that was a reference to some tests done by some doctors, a Schwartz and Dr. Packey?

MR. MURRAY: I object to the form of the question, Your Honor. That's not what it says. If you'll read it closely, you will see that.

THE COURT: Objection will be overruled.

Q (By Mr. Carney) Let me ask you this: These were

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some skin tests done on some animals, some rabbits?

A Yes.

Q And talking about the short-term or acute problems with putting PCB on your skin and getting irritation is different from the long-term problems where you might get chloracne?

A Certainly.

Q And an industrial hygienist or a technical person at Westinghouse that would read this would not think that, because you could not have any serious irritation with a short-term skin patch, that that would mean it would be safe to handle the PCBs and get it on your skin?

MR. MURRAY: I object to the question. He's asking him what somebody else would understand.

THE COURT: All right. Objection will be sustained.

Q (By Mr. Carney) And I didn't show this to the jury and Mr. Murray didn't either, but the last sentence of this Chapter Nine on "Dermatology and Toxicology," which was in the Monsanto safe handling of Aroclors brochure, it says, after saying that you should have your -- keep your hands free of the liquid, it says, "It is a simple matter" -- it's the last sentence -- "It is a simple matter and in line with good housekeeping and personal cleanliness to exercise the suggested and required precautions in all cases"?

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A It says that.

Q And when you have a two-page chapter on dermatology and toxicology, you can't put all of the information in one two-page document; can you?

A Most certainly not.

Q This trial has gone on for two weeks now and we've talked about all of the different things that are involved, the different tests. And it would take more than two pages to put all that information in; wouldn't it?

A It certainly would.

Q Now, Mr. Murray spent a fair amount of time referring you to your deposition in 1987 in another case?

A I recall that, yes.

Q And I think he brought out the fact that you couldn't remember where you went to lunch when those visitors from Bloomington came down in 1967, twenty years before the depo?

A Yes, he did.

Q And you couldn't remember if the meeting started on time and some of those details?

A Correct.

Q Let me ask you: You were shown in the deposition in 1987, two documents. One had an agenda and one had some other information about those -- the visits of those two Bloomington supervisors?

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A Yes.

Q And you had not seen those two exhibits prior to the deposition to get you thinking about what happened?

A No, not in the twenty-year period that elapsed.

Q After that deposition, were you shown another document that related to that visit?

A Yes.

Q Monsanto Exhibit 26.

MR. MURRAY: Could I see it, counsel?

Q (By Mr. Carney) This was a memo dated September 27, 1967, titled, "Westinghouse Electric Visit to Anniston"; correct?

A Correct.

Q And you are shown as getting a copy of that? This particular copy went to a Mr. Fuhrmeister?

A Yes.

Q Was he somebody down in Bloomington -- I mean, in Anniston?

A Yes.

Q And does that memo say where you went to lunch?

A It does.

Q It says that, "Dinner reservations have been made for a noon meal at the Anniston Country Club"?

A It does say that.

Q And did that help you refresh your recollection as

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to where you went to lunch?

A It did.

Q And it tells about where they were going to -- when they were going to be picked up and what flight they were going to come in, when they were going to arrive, I think, the night before?

A It does.

Q And it talks about where they were going to stay, at the Holiday Inn?

A It does.

Q And it talks about there were plans for this particular writer who was writing this memo to you that he was going to have breakfast with them?

A Yes.

Q And that they were going to follow the agenda outlined for the visit?

A Yes.

Q And was this memo helpful in focusing you on details like when the meeting started and where you went to lunch?

A It did.

Q Mr. Murray showed you several sections of your deposition, and this deposition is -- I think I've only got one copy, so I'm going to have to kind of share this with you, since this was in another case and we just have one

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copy. But, this is a 427-page deposition, so it was somewhat lengthy?

A Yes, it was.

Q And let me just reference a couple of other places in the deposition. At page 276 of the deposition, it refers -- you did remember about the stated purpose of the visit at this page; do you not?

A Yes.

Q And the question at the bottom of page 276 --

THE COURT: Line number, counsel. Line number, please?

MR. CARNEY: Oh, I'm sorry, line twenty-three.

Q (By Mr. Carney) The question is -- you were asked back in 1987:

"Q The stated purpose of the visit was what?"

And your answer was:

"A The stated purpose was to review with the Westinghouse Bloomington representatives the proper handling of PCBs to avoid spills, people exposure and the like."

And then the question was asked:

"Q Westinghouse, as a purchaser of PCB materials from Monsanto, was looking to Monsanto to acquire information about proper handling or to protect the safety of the worker; correct?

"A Yes.

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"Q And you saw nothing inappropriate as the plant manager about having people at your plant, as the manufacturer and seller of those PCB materials to Westinghouse, to give information to Westinghouse on those matters?"

And your answer was: "Correct."

Did I read that right while you were following?

A Yes, you did.

Q And that, at another point in the deposition, at page 288, you were asked some questions about the agenda for the meeting. Let me just read those.

A I see that.

Q Just to make it quick. At line two --

MR. MURRAY: Could we approach the bench, Your Honor?

THE COURT: Yes, you may.

[The following proceedings took place at the bench outside the hearing of the jury:]

THE COURT: Yes, sir, Mr. Murray.

MR. MURRAY: Your Honor, I'm not sure what the procedure is. Do I have another chance to come back, because this is being completely read out of context. He's reading it like he's testifying from memory, but if you go a few pages before that, you see he's only reading from a memo. He had no recollection.

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THE COURT: All right, you will not be able to come back.

Mr. Carney, it's improper use of the deposition. You have to ask a question.

MR. CARNEY: Okay.

[Proceedings were then resumed within the hearing of the jury as follows:]

Q (By Mr. Carney) Do you recall in your deposition that you did make some comments in the 1987 deposition about the agenda?

MR. MURRAY: Judge -- Your Honor, that's just exactly what I got finished saying.

THE COURT: We don't need to approach.

Mr. Carney, it's improper use of the deposition. Please ask a question. You may use the deposition for impeachment purposes, or you may use it to refresh his memory if, in fact, his memory needs to be refreshed. You have to ask a question, counsel. Let's please move forward.

Q (By Mr. Carney) Let me just show you page 208, lines two through twelve, and ask you whether that was a section that was not shown to you by Mr. Murray.

MR. MURRAY: May we approach the bench, Your Honor?

THE COURT: Mr. Carney, that is improper use of

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the deposition. Let's move forward.

Q (By Mr. Carney) Did you mention in that deposition about the agenda?

MR. MURRAY: Your Honor, can I approach the bench, please?

THE COURT: Yes, you may.

[The following proceedings took place at the bench outside the hearing of the jury:]

MR. MURRAY: Your Honor, this is exactly what I was saying. It's improper and he keeps trying --

THE COURT: Mr. Murray, if, in fact, you only read or had him to read a portion of the deposition, the other side has a right to come back and to complete the reading. It's a strange rule in our state called the rule of completeness.

MR. MURRAY: I agree with that, Your Honor. But what he's not reading, he's not reading the appropriate parts and I don't get a chance to come back. He's only talking about this agenda, which he was reading from a memo.

THE COURT: All right. The portions of the deposition that were read by Mr. Papageorge on redirect were pages 276, 280, 284, 286, and they continued for some time, which includes page 280, which is now at issue.

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MR. MURRAY: Your Honor, that doesn't matter.

THE COURT: You went to page 288, line ten, where he was engaging in questions regarding the meeting held.

MR. CARNEY: It's right here.

THE COURT: You read exactly what you wanted to read. He has a right to come back in and to complete the reading of the deposition.

MR. MURRAY: Wait a minute. Let me just ask you this question, Your Honor: Is he going to be allowed to come in and make it sound like he was testifying from memory there? Because he wasn't. And I ought to have an opportunity to come back and show the jury that he was testifying from the memo.

THE COURT: Mr. Carney, indicate to the jury that there is a memo that he's reading from and it is not his words. Let's move forward.

MR. CARNEY: Okay.

[Proceedings were then resumed within the hearing of the jury as follows:]

THE COURT: Let's proceed, counsel.

Q (By Mr. Carney) At this point in the deposition, page 288, line two, did you have in front of you and were you referencing the agenda memo?

A Yes.

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Q Okay. And would you just indicate -- Mr. Murray read, I think, a couple of lines where you said -- lines ten, eleven and twelve -- where you indicated that you didn't remember whether the meeting went off on schedule; isn't that right?

A That's correct.

Q And just read the lines, starting at line two, just in front of where Mr. Murray had you read?

A You want me to read them out loud, sir?

Q Yes, if you would.

A "Q First, let me ask you: The schedule was that, at 8:30, you would make the introductory remarks and they would last fifteen minutes?

"A Yes.

"Q Then, there could be a discussion of the toxicology materials and safe handling materials from 8:45 to 9:15?

"A Yes."

Q And then it went on. Read the next one, which you did, which Mr. Murray had you read.

A "Q Do you recall whether this meeting went off as scheduled?

"A No, I don't."

Q And then, at page two eighty -- at page 274 of the deposition, you testified again about that same visit of

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those Bloomington workers; isn't that right?

A I did.

Q And can you read those lines, three through thirteen?

A "Q Do you recall actually meeting with them at the Anniston plant?

"A I do, yes.

"Q Do you know, after meeting and visiting with them, what sorts" --

MR. MURRAY: It goes beyond the question, Your Honor.

THE COURT: It will be overruled.

THE WITNESS: "Q -- what sorts of positions they held in Bloomington?

"A Mr. Pickett was the maintenance supervisor and the other individual was the manufacturing supervisor's representative. I don't quite know what level of supervisor, but he had to do with the working personnel as distinguished from the maintenance personnel."

Q (By Mr. Carney) Okay. And I think you had trouble remembering his name yesterday?

A Mr. McNally, yes.

Q And then, finally, at page 281 of your deposition, at line two, if you could just read that, those lines down

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to this point here, two through fifteen?

A "Q Now, this visit provided an opportunity for Monsanto to impress upon Westinghouse personnel the importance of safe work practices; did it not?

"A Yes.

"Q They were going to spend the day at your plant where you could talk to them about the importance of good practice to keep their workers from coming into contact with PCBs; correct?

"A Correct.

"Q A visit of this type was an opportunity for Monsanto to put together a well prepared and well presented program to meet the customer's needs; was it not?

"A Yes."

Q And is that your memory as well today that that's what was done at that meeting?

A It is.

Q We got into a little discussion, or you did, you and Mr. Murray, on your cleanup program and the timing of it. Let me just ask you a couple of questions there. You got to the plant in 1965?

A I did.

Q And after a period of a few months, you then started your program to clean up the plant and make it a better, cleaner plant, correct the dripping and those kinds

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of things?

A I did.

Q And did that happen all at once or did you take a couple of years to get all those things in place?

A Oh, it took -- it's a never-ending job, really, but it did take a couple of years before the improvement was noticeable.

Q By 1987, towards the end of it, September 27, when the Bloomington people came down to the plant, had you pretty well cleaned up the plant?

A Did you say '87, sir?

Q If I did, I misspoke. I meant September 27, 1967.

A By that time, it was pretty far on, yeah.

Q And then, by 1969, you got the outstanding award for the plant?

A It was even better, yes, sir.

Q Okay. Mr. Murray showed you a couple of press releases. One was 1975, and that was a draft; was it not? Do you recall that or do you want me to --

A I believe I recall that, yes, a draft.

Q And then he showed you a 1980 press release of Monsanto. Were you involved at all in PCBs in 1980?

A I was not.

Q That was three years after you left the job that you had?

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A Three or four.

Q Three or four?

A Uh-huh.

Q Do you know whether or not Monsanto ever sent that press release or released it?

A I do not know.

Q Did Monsanto often prepare releases and not send them out?

A Oh, yes, many times.

Q Did they have to go through an approval process?

A Certainly.

Q Now, Dr. Kelly testified that the original sample that was sent to Dr. Drinker, the Harvard professor, was sent to Dr. Drinker by Halowax. Do you have any reason to dispute Dr. Kelly on that?

A I do not.

Q And then he testified that Dr. Drinker wanted some of Monsanto's PCB and he sent a Monsanto PCB to Dr. Drinker. Do you have any reason to dispute that?

A I have no reason to do so.

Q And Mr. Murray brought out the fact that Dr. Drinker, as it turned out, had been testing something that had some PCBs in it but it had another chemical altogether in it?

A That's my understanding.

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Q And is it true -- can you conclude that if you combine two chemicals together, that you can then assume that each one of those chemicals would behave that way if you separated them out? Is that something, as a chemical engineer, that you think is --

A I'm sorry, what did you say? "Behave that way"?

Q Yes. In other words, say you combine Chemical A with Chemical B, mix them together and give them to animals and they have a bad reaction, how would that mean that Chemical A, if you just gave them Chemical A by itself, that that would -- the animals would have the same reaction?

MR. MURRAY: Your Honor, this witness is not a toxicologist.

MR. CARNEY: He's a chemical engineer.

THE COURT: Objection will be sustained.

MR. CARNEY: Okay, I withdraw that.

Q (By Mr. Carney) And just, finally --

MR. CARNEY: I have no further questions.

THE COURT: You may step down, Mr. Papageorge.

[The witness stepped down.]

oOo

MR. MURRAY: May we approach the bench, Your Honor.

THE COURT: Yes, you may.

Ladies and gentlemen, you may stand and stretch

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your legs if you wish.

[The following proceedings took place at the bench outside the hearing of the jury:]

MR. MURRAY: Since I am not allowed to come back and question the witness anymore, I would like to introduce pages 271 through 296 of Mr. Papageorge's deposition so that the jury can get that entire line of questioning in context. I believe that Mr. Carney's questions on recross are misleading. They did not talk about the entire line of questioning. The portions that I read to him on my examination were only designed to show that he really didn't have any recollection, and the way they were read by Mr. Carney on recross were taken out of context and misleading. And I would request that the entire line of questioning be admitted as an exhibit.

MR. CARNEY: I object.

THE COURT: I don't admit depositions as exhibits. It simply goes to the weight of the evidence. I mean, that's the way I try cases in here. You get two shots at it, you do it, and if you open something up on redirect, he's going to have an opportunity to close it on recross, and that's it. It simply goes to the weight of the evidence. I mean, that's basically your job is to give your spin to the jury. That's basically

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what each of you are doing. So what he did in recross is nothing different than what you did in the reading of the deposition in redirect, so I don't accept depositions as exhibits.

You need to make a record; is that correct?

MR. MURRAY: I did.

THE COURT: I'm talking to Ms. Rutter.

Are you getting ready to put the --

MR. MURRAY: I thought we would do the doctors, Your Honor.

THE COURT: You want to do the doctors first?

MR. MURRAY: You want to take a break while we set up?

THE COURT: Well, actually, no, because I'm trying to keep a schedule so the court reporters can come in and do their thing without interrupting anything. So, why don't you go ahead and get set up.

MS. RUTTER: For the record, under Indiana law, Mrs. Bechtold does not have a claim for punitive damages under the wrongful death act. Under the Indiana Wrongful Death Act, she has a loss of consortium claim from the date of death, that commences at the date of death. Indiana law permits a separate loss of consortium claim for the spouse individually from the date the individual became ill until the date

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of death and punitive damages under Indiana law, apparently, are allowed for that discrete portion of an individual loss of consortium claim, i.e., from the date of illness to the date of death. That's in contradistinction to loss of consortium from the date of death forward where, under the Wrongful Death Act, there is no punitive damages claim.

It is -- Monsanto asserts that plaintiff has not pleaded a loss of consortium claim before the death and so that she has no pleading on file that would support punitive damages at all in this case, and we have filed trial briefs to that effect. The court has indicated that you do not intend to rule on this at this time, so I am preserving. We object to any evidence about loss of consortium of Mrs. Bechtold between the date that Mr. Bechtold became ill in approximately May of '91, and the date of his death, March 30th, 1994, to avoid having to jump up and make continuing objections during the testimony of the three children and Mrs. Bechtold and any other witnesses who appear on this subject. It is my understanding that my objection is noted on the record. We object to this evidence because there is not a pleading on file to support it, and that I have a continuing objection and need not make objections while these witnesses appear and testify.

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THE COURT: All right. The objection will be a continuing objection.

At this time, Mr. Murray, I will let you follow up with whatever comments you wish to make at this time. As indicated in chambers, the court will not rule on this matter at this time and will reserve rulings with regard to the punitive damages issue.

MR. MURRAY: Just for the reasons cited in my memo to the court, I believe we have pled the consortium claim and I believe this evidence is proper.

THE COURT: Okay.

[Proceedings were then resumed within the hearing of the jury as follows:]

THE COURT: Mr. Murray. Mr. Murray, you may call your next witness.

MR. MURRAY: I call Brent Bechtold, Your Honor.

THE COURT: You may proceed, Mr. Murray.

BRENT BECHTOLD,

having been duly sworn by the Deputy Clerk, testified as follows:

DIRECT EXAMINATION

BY MR. MURRAY:

Q Would you tell the jury your name, please?

A Brent Bechtold.

Q And how old are you, Brent?

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CERTIFICATION OF REPORTER

I, Sharon J. Morfick, Certified Court Reporter, Certified Shorthand Reporter, and Certified Verbatim Reporter, hereby certify that I am the Official Court Reporter for Division 6 of the City of St. Louis Circuit Court, that on Friday, the 1st day of July 1994; Monday, the 18th day of July 1994; and Monday, the 8th day of August through and including Tuesday, the 30th day of August 1994, I was present and reported all the proceedings had in the case of JUDITH BECHTOLD v. MONSANTO COMPANY, Cause No. 922-0911; and I further certify that the foregoing pages contain a true and accurate reproduction of the proceedings.

I further certify that the cost of preparing this transcript is as follows: 2851 pages

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Sharon J. Morfick

Sharon J. Morfick, CSR, CCR, CVR
Official Court Reporter

This transcript of the record on appeal was completed and attorney was notified of said completion on March 31, 1995.

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